IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6088 OF 2000

Shri Jawahar H. Sabhandasani.... .... Petitioner
V/s
The Union of India & Ors..... ... . Respondents

Mr.V.N. Tayade , Adv. For the petitioner.

Mr.D.A.Dube i/by S.S. Sarkar for respondent No.1.

Mrs.N.V.Masurkar i/by V.N. Masurkar for respondent No.2.

CORAM: V.G. PALSHIKAR

AND

D.B. BHOSALE, JJ.

11.10.2005.

Oral Judgment (**Per Palshikar, J**):

By this petition the petitioner who is a consumer of the telephone department using its telephone has made the following prayers:

"a) To call for the record of tele.nos.549577, 544729, 555801, 555802, 555803 and 555804 for verification that no outstanding bills are pending against these telephones and also call for the record of tel.no.543846 for the verification of the jumping of the meter reading from one bill to another bill.

b) To issue writ of mandamus or order or direction, directing the respondents to reconnect the tele.nos. 549577, 544729, 555801, 555802, 555803 and 555804 at Ulhasnagar Telephone Exchange.

c) To order investigation to be conducted by Central Bureau of Investigation in the jumping of meter reading during the period

16.9.98 to 15.11.98 and 16.11.98 to 15.1.99.

d) Pending, hearing and final disposal of this petition the respondents may be directed to reconnect the tel.nos. 549577, 544729, 555801, 555802, 555803 and 555804.

e) Pending, hearing and final disposal of this petition the respondents may be directed to hand over this case to C.B. I. For investigation in working of tel.no.543846 for the period 16.9.98 to 15.1.99.

g) To grant interim and ad interim relief in terms of prayer clause (e) and (f).

h) To award the cost of petition.

i) To grant any other relief as this Hon'ble Court may deem just and fit in the circumstances of the case."

At the outset it must be borne in mind that grant of telephone given by the telephone department and acceptance of the same by the consumer is in the field of purely contract. A telephone consumer enters into a contract with the department to use the telephone of the department on conditions mentioned in the contract. That being so any violation of the conditions of contract would be in the realm of breach of contract for which a writ need not be maintained. Apart from that reply has been filed in this case to the various prayers made by the petitioner in which it is specifically pointed out that there are several disputed questions of fact after enquiry report as ordered by this Court was submitted. According to the respondents therefore in the present case the matter was liable to be taken for arbitration in accordance with the provisions of the Telegraph Act. It is stipulated that in the arbitration the voluminous record that were produced before the Enquiry Officer can be considered in details and therefore it was contended that the

petition under Article 226 is not liable to be maintained.

2. Writ Petition 1123 of 2000 was filed by the petitioner in relation to this very dispute and this Court while deciding the petition directed enquiry into the matter being conducted by an officer of the stated rank. The department accordingly nominated the officer as enquiry officer and enquiry was conducted as per the directions of this Court in Writ Petition No.1123 of 2000. The report as submitted by the enquiry officer holds that the bill or bills as issued to the petitioner were correctly issued and therefore there is no further action necessary. This report is assailed in this petition basically on two grounds, first there has been violation of principles of natural justice in as much as the petitioner was not supplied the documents on the basis of which the report was arrived at. This according to the petitioner is breach of the principles of natural justice. There is nothing on record in the report to show that any such demand for supply of documents was made. A notice has been issued five months after the report saying how the report is wrong. A copy is annexed as Ex.G to the petition page 91. Nowhere in this communication there is any mention of violation of these principles of natural justice in non supplying to the petitioner the documents on the basis of which report was delivered during the course of enquiry. The only grievance was that the annexures did not accompany the copy of the report. The grievance that by non supply of documents on which reliance was placed in the report principles of natural justice have been violated is therefore made for the first time in this petition. The petitioner also had the remedy of challenging the bills by way of suit, he could have also resorted to arbitration as provided under the Telegraph Act but the petitioner has chosen to approach this Court

under Article 226 on the omnibus ground that principles of natural justice have been violated. There is no question of any violation of principles of natural justice in a case which is at the highest a case of breach of contract. Enquiry was ordered by this Court and the enquiry was completed in which the petitioner had participated. During his participation no grievance of any document being not supplied to the petitioner was ever made and now a grievance is made that because those annexures were not supplied principles of natural justice are violated. All that the petitioner was entitled to is hearing or an enquiry as ordered by this Court into the correctness of the bills. That having been given to the petitioner and report of the Enquiry officer having been supplied nothing remained to be done for which grievance can be made in this petition. Apart from that there is nothing on record to show that he had during the course of enquiry made demand of data to be used by enquiry officer and there is therefore no question of it not being supplied to the petitioner.

3. Several disputed questions of fact have arisen. In any event the petitioner after enquiry was satiswfied with the enquiry report and he assailed the same only by his notice by saying that it is bad because copies of annexures are not supplied to him. Such being not the requirement of law the contention is baseless. Then reliance was sought to be placed on a judgment reported in the case of ***Abdul Aziz Meherbakhs*** v. ***Mahanagar Telephone Nigam Ltd. & others***, AIR 2000 Bom. 260 to say that this Court ought to interfere in matters of excessive bills. This judgment is of no use whatsoever to the petitioner as the petition entertained by this Court was challenging the award made by the arbitrator under the provisions of

Telegraph Act. Challenging the award of quasi judicial authority is one aspect and challenging the breach of contract is another. This judgment is therefore of no use to the petitioner. Reliance was also sought to be placed on a judgment of the Gauhati High Court. With respect we are not bound by that judgment.

4. In our opinion, the petition is entirely devoid of any merits and is liable to be dismissed. It is accordingly dismissed with costs which are quantified at Rs.2,500/-.